In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-685

WALTER C. ROBSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a non-jury trial in the United States District Court for the Central District of California, petitioner was convicted of willful evasion of income tax, in violation of 26 U.S.C. 7201. He was sentenced to a term of one year's imprisonment. The court of appeals affirmed *per curiam* (Pet. App. 1-3).

The government proved its case by means of the net worth method. Contrary to petitioner's contention (Pet. 7-12), there was ample evidence to demonstrate that petitioner's correct income for 1966 was $44,528.81, and not $5,039.34 as reported on his return (Govt. Ex. 183, p. 3). In order to prove that a taxpayer's net worth increase arose from current taxable income, the government may proceed in either of two ways:

(1) by introducing into evidence a likely source of unreported income, *Holland* v. *United States*, 348 U.S. 121, 137-138; or (2) by establishing that the net worth increase did not arise from nontaxable sources, *United States* v. *Massei*, 355 U.S. 595.

Here, the government's proof proceeded on both grounds. Petitioner was the sole proprietor of a nightclub known as the Phonebooth (Tr. 245-248),[1] which was certainly a likely source of unreported income. Moreover, petitioner admitted to the Internal Revenue Service that he had received no gifts or inheritances except an apartment house, as a gift from his mother in 1962 (Tr. 990-991). However, that building was sold by petitioner before 1966 in order to provide him with the funds to buy his nightclub (Tr. 584). Although petitioner made the belated claim that he had received other substantial gifts from his parents, an examination of his parents' gift tax returns for the years 1950 through 1967 refuted the existence of such gifts other than the apartment house (Tr. 910-911; Govt. Ex. 178). Indeed, there was evidence that petitioner's father had not given him any cash gifts and was in poor financial condition when he died in 1957 (Tr. 910-912). In light of these facts adduced at trial, petitioner's claim that there was no evidence to equate his net worth increase with currently taxable income is plainly without merit.

---

[1] "Tr." refers to the transcript of trial proceedings.

Petitioner further argues (Pet. 13-19) that the government should have called three witnesses whose names were supplied before trial as persons having knowledge of an alleged cash hoard. The first of these persons, William Williams, stated in writing (Defendant's Ex. S) that he had made a $10,000 gift to petitioner in 1957. But even if Williams made such a gift nine years prior to the year at issue, it was not likely to have affected the increase in petitioner's net worth in 1966. A second person, Robert J. Morris, testified that when he left petitioner in 1962, petitioner had about $30,000 in cash (Tr. 1254). However, this testimony conflicted with petitioner's admission to the Service that he returned from a trip around the world in 1962 because he was running out of money (Tr. 579-585). Finally, Frank Pawluc, a bank manager, speculated that petitioner could have had between $20,000 and $40,000 in cash in a safe deposit box in the bank. At trial however, Pawluc conceded that "really it's hard to tell" the amount of cash petitioner kept in a safe deposit box (Tr. 1304).[2] Since the testimony of these witnesses was not given credence by the government, it had no duty to call them as witnesses, and petitioner cites no authority for his novel claim that it had such an obligation. In fact, Morris and Pawluc testified for the defense, which also introduced the written statement from Williams. Petitioner thereby received whatever benefit the testimony of these witnesses provided and cannot complain that the government should have also called them to the stand.

---

[2]Petitioner testified in his own behalf. In answer to questions put by the court, petitioner stated that he had $30,000 in his safe deposit box in July 1964, and the same amount in November 1966 (Tr. 1747, 1750-1751), and that he had about $5,000 in cash in his home at the beginning of 1966 and also at the end of 1966 (Tr. 1752-1753). It was therefore apparent from petitioner's own testimony that the 1966 increase in his visible assets could not have arisen from the alleged cash hoard, even assuming that it existed.

Finally, petitioner argues (Pet. 20-22) that he was denied due process of law when he was refused access to the grand jury testimony of Williams, Morris and Pawluc. They did not testify for the government, however, and petitioner was therefore not entitled to their grand jury testimony under 18 U.S.C. 3500. After studying the transcripts of the grand jury testimony of these witnesses, the trial court concluded that they contained no relevant information that was not already known to petitioner (Tr. 1126). *Wardius* v. *Oregon*, 412 U.S. 470, cited by petitioner (Pet. 20-23), does not support his claim. There, the Court reversed a conviction because the trial court refused to permit a defendant to introduce alibi evidence on the ground that he had failed to comply with a mandatory state statute requiring him to give pre-trial notice of an alibi defense, where the statute made no provision for discovery of the identity of the prosecution's rebuttal witness. Under those circumstances, which do not coincide in any relevant particular with the instant case, the Court held that the defendant did not have to reveal his alibi defense.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1975.

DOJ-1975-01